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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/575,633	05/22/2000	William B. Johnson		1491

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EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 12/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/575,633

Applicant(s)

JOHNSON, WILLIAM B.

Examiner

Neil Levy

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27-39 is/are pending in the application.
- 4a) Of the above claim(s) 36-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 27-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 27-39 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Newly submitted claims 36-39 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: these claims are directed to a patentably distinct restricted out Group not examined in the CPA, of the now filed RCE.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 36-39 stand withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

The elected species remains as that of example 4, sodium lauryl sulfate surfactant.

This application contains claims directed to the following patentably distinct species of the claimed invention: species of liquid; aqueous or non-aqueous.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 34, 29-33, 35 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Claims 34, 27-33, 35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims now require either (1) non-ionics, other than ethoxylated nonyl phenol, (2) ethoxylated nonyl phenol, (3) amphoteric or (4) cationic surfactants. If cationic, there must be all of sodium Lauryl sulfate through cetrimoniom chloride compounds as recited at lines 5 — 7 of claim 34. It is not clear that all 5 compounds, or even more than one of the cationic surfactants are intended to be claimed, as opposed to claim to one of any of the S. It is not clear that the phenol compound is cationic; however, it appears twice (line 5, line 6) in claim 34. It is examiners understanding this surfactant is in fact non-ionic. It is not clear what the cetrimoniom chloride is ; we assume a spelling error.

The rejection is made as the claim can be construed, given the specification, in multiple forms, as indicated, rather than as a new matter, written description or enablement issue. If in fact cetrimonium chloride is a compound of the instant specification, rather than misspelling, please provide the structure. The surfactant group is in the consisting of format, and does not include mixtures thereof. Claim 32 requires a plurality; again raising a question-the language (consisting) precludes any plurality except that of the cationic surfactants, which require **S** compounds. We question if that is in fact intended.

Claims 34, 27-33, 35 are rejected under 35 U.S.C. 103(b) as being unpatentable over Aboud-5489433 in view of Guice et al 6653971 and Muernighoff et al 6068849.

Aboud: Non-toxic insecticides (col.2, top) incorporate citric-ascorbic acid, and a (col.3, V) surfactant (lines 13-22, col.2) which, when applied to the insect, disrupt respiratory function, resulting in suffocation. See example 1, the instant claim 31 surfactant, kills cockroaches (example IV). The prepared solution, aqueous, is mixed and applied in an aerosol dispenser or sprayed onto an identified insect (col.2, lines 23-32). The instant control apparatus is not specified by Aboud; neither is it specified in the instant claims. However, Aboud applies conventional delivery techniques with an aerosol dispenser, thus within the purview of one in the art to provide **S**uch control apparatus is utilized by Guice-see abstract-insects are identified, then sprayed.

See fig. 11a, b- sound detection (RF) Locust; butterfly (col.8, lines 14-16, 26-32) is utilized, using known technologies for indoor or outdoor environmental control of insect pests. Kill methods employed include physical, obviating mutations to chemically

resistant forms (col.23, bottom). Insects are detected, then killed, by the control apparati (col.26, bottom), but, the described systems are expensive (col.27, top).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize non toxic control of insects, to use Abouds' compositions, in art recognized techniques for spraying on insects, by administration through the detection, control apparati and methods exemplified by Guice. **M**otivation to utilize Aboud's composition with Guice is the use of less expensive kill technique, Aboud's smothering, than Guices Lazer killer, while still precluding a chemical caused insect mutation to a smothering resistant form, with use of a non toxic to non target species aqueous composition. Further, we cite Mueninghoff, of record, to show it is known in the art to utilize viscosity modifier and thickeners, and the instant cationic. **S**ee example 2 of the non-aqueous concentrate at col.7; when applied with surfactant formulations of aqueous sprayable pesticides.

There is no unobvious and/or unexpected results obtained since the prior art is well aware of the use adjuvants; thickeners, cations, and the use of ingredients for the functionality for which they are known to be used is not a basis for patentability.

Applicant's arguments filed 8/19/04 have been fully considered but they are not persuasive. Updated search reveals now applicable references. Also the description (p.4, 5) is limited to an aqueous solution as providing the claimed effects, and as disclosed (p.9, line 7).

Non-aqueous liquids are not at all identified, exemplified or their mechanistic effects, if any, described or explained. All 17 examples require over 50% water. As to

the surfactants, some, but not all, are identified in the claims; however, any monionic, amphoteric, and, other than the **S** required, cationic surfactants are permissible; we find them in the prior art, thus, not a basis for patentability.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday from 7:00a.m to 5:30p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz, can be reached on 571-272-0887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Levy/tgd

November 17, 2004

NEIL S. LEVY
PRIMARY EXAMINER